

ST 02-30

Tax Type: Sales Tax

Issue: Statute of Limitations Application

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 02-ST-0000
v.)	IBT # 0000-0000
)	
ABC LABORATORIES, INC.,)	Claim for Credit or Refund
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent R. Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; William Felker of Dryden Advisory Group, LLC for ABC Laboratories, Inc.

Synopsis:

On July 2, 2001, ABC Laboratories, Inc. (“taxpayer”) filed amended sales tax returns that requested refunds for taxes paid during the first five months of 1998. The Department of Revenue (“Department”) issued a Notice of Tentative Denial of Claim for all of the requested refunds on the basis that they should have been filed on or before June 30, 2001. The taxpayer timely protested the Notice. The parties have filed a joint stipulation of facts and supporting briefs and have requested that this matter be resolved based on their written submissions. After reviewing the documents, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On July 2, 2001, the taxpayer filed amended sales/use tax returns that requested refunds of taxes paid during the first five months of 1998. (Stip. #1)
2. June 30, 2001 and July 1, 2001 fell on Saturday and Sunday, respectively. (Stip. #2)
3. On November 30, 2001, the Department issued a Notice of Tentative Denial of Claim for Sales Tax to the taxpayer. The Notice denied the taxpayer's claim for the amount of \$12,997.03. (Stip. #3)

CONCLUSIONS OF LAW:

A taxpayer who pays the Department more tax than is required or due is entitled to a refund or credit memorandum for the amount overpaid. (See 35 ILCS 120/6) This right to a refund or credit is provided pursuant to section 6 of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*), which provides in relevant part as follows:

"If it appears, after claim therefor filed with the Department, that an amount of tax or penalty or interest has been paid which was not due under this Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment ...

* * *

However, as to any claim for credit or refund filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under this Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded, except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability as provided in Section 4 of this Act, such claim may be filed at any time prior to the expiration of the period agreed upon." 35 ILCS 120/6.

Section 21 of the Use Tax Act contains a similar provision. (See 35 ILCS 105/21). Under these provisions, absent an extension agreement between the Department and the taxpayer, the taxpayer will have a maximum of three and one-half years in which to file a request for a credit or refund. Any request filed after the permitted time period has passed will be denied.

The Department contends that under sections 6 and 21, if a claim is filed on July 2, 2001, then no refund will be given for taxes relating to that claim that were paid before July 1, 1998.

The taxpayer's claim in this case was filed on July 2, 2001, and the taxes relating to that claim were paid during the first five months of 1998. The Department therefore contends that the taxpayer's claim is time-barred. If the taxpayer had filed its claim on June 30, 2001, it would have been timely.

The taxpayer argues that it is entitled to the refund pursuant to the Statute on Statutes, which provides in part as follows:

"The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded." 5 ILCS 70/1.11.

The taxpayer states that June 30, 2001 and July 1, 2001 were on a Saturday and Sunday, and they should not be included in determining the time within which a claim should be filed. The taxpayer notes that it did not have an opportunity to file the claim on the final day for filing, June 30, 2001. The taxpayer therefore claims that for practical purposes, when the final day falls on a Saturday, Sunday or holiday, the deadline for filing is extended. To find otherwise, the taxpayer claims, would be repugnant to the context of the statute.

The Department argues that the time periods in the statutes do not require an act to be done within a certain period of time; they provide a measuring device that limits the Department's authority to grant credits and refunds. The Department contends that the dates provided in the statute are used only to establish when a claim was filed rather than when it must be filed. The statute does not require anyone to do anything by any date and does not set a "deadline" for filing a claim. The statute simply classifies the claims based on their filing dates. The Department states that the Statute on Statutes does not apply when it would be contrary to the legislative intent of the statute at issue. (5 ILCS 70/1) The Department argues that the

legislature's intent concerning the credit or refund provision was to only allow a credit or refund for certain claims, and it did not intend to set a time within which the claim must be filed.

The taxpayer's arguments are persuasive because the Department's regulations apply the Statute on Statutes to claims. The regulation titled "Claims To Recover Erroneously Paid Tax" provides in part as follows:

"A claim for credit shall be considered to have been filed with the Department on the date upon which it is received by the Department. (See Sections 130.1201 and 130.1205 of this Part for further information regarding when claims are deemed to be "received" by the Department.)" 86 Ill.Admin.Code §130.1501.

Section 130.1205 is titled "Due Date that Falls on Saturday, Sunday or a Holiday" and provides in part as follows:

"If the due date for any return or other report or payment falls on Saturday, Sunday or a Holiday, such due date shall be considered to be the next business date either for the purpose of submitting such return or other report or payment by mail or for the purpose of submitting such return or other report or payment in person." 86 Ill.Admin.Code §130.1205.

Under these regulations, the taxpayer's amended returns were timely filed.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's claim for refund be granted.

Linda Olivero
Administrative Law Judge

Enter: December 10, 2002